

SODERBERG RAWHIDE RANCH CO.

IBLA 81-1084

Decided April 19, 1982

Appeal from decision of Wyoming State Office, Bureau of Land Management, dismissing protest against bond approval (W-74429).

Vacated and remanded.

1. Mineral Lands: Mineral Reservation--Mining Claims: Surface Uses--Rules of Practice: Protests--Stock-Raising Homesteads

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

APPEARANCES: Alan B. Minier, Esq., Cheyenne, Wyoming, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

The Soderberg Rawhide Ranch (Soderberg Ranch) is the owner of various interests in 15,050 acres of land in Goshen and Platte Counties, Wyoming. Its ownership is apparently limited to the surface rights in most of these lands, the mineral estate having been reserved to the United States when the surface estate was originally patented under the Stock-Raising Homestead Act of December 29, 1916, as amended, 43 U.S.C. §§ 291-302 (1970) (repealed 1976).

The record shows that the Kerr-McGee Corp. (Kerr-McGee) located lode mining claims in 1980, apparently for uranium, covering approximately 3,100 acres of land owned in part by Soderberg Ranch. Kerr-McGee evidently

began to develop the claims in 1980, although it is not clear to what extent, and the parties subsequently attempted without success to negotiate a surface agreement to govern development and to provide compensation for any damages to the surface estate.

On February 25, 1981, Kerr-McGee informed BLM of its intention to reenter the claims, presumably for purposes incident to mining and removing the uranium. In the absence of written consent or waiver by Soderberg Ranch or an agreement covering damages to the surface estate, Kerr-McGee filed a bond for BLM's approval in the amount of \$200,000 pursuant to section 9 of the Stock-Raising Homestead Act, supra, and 43 CFR 3814.1(c), the corresponding regulation. The bond was in favor of the United States and purported to cover all damages to crops or tangible improvements on the lands, or to the value of the land for grazing, as the owner would suffer by reason of mining. Soderberg Ranch was served with a copy of the bond and the request for approval.

On March 12, 1981, pursuant to 43 CFR 3814.1(d), Soderberg Ranch filed an objection to BLM's approval of the \$200,000 bond. It estimated the value of its estate as in excess of \$2,000,000, and set out specifically its concerns that mining would damage its water supplies and, hence, destroy its grazing operation. It also expressed concern that since the area to be mined bisected the ranch, the principal travel routes through the ranch would be destroyed. It concluded that a larger bond, of at least \$2,000,000, was necessary. It also alleged that Kerr-McGee had not made a discovery of a valuable mineral.

On May 22, 1981, BLM referred the matter to the Manager of the Casper, Wyoming, District Office, requesting that he conduct a field examination of the affected lands and provide a report and recommendations as to the sufficiency of the tendered \$200,000 bond. On June 23, 1981, the District Office manager replied as follows: "We have conducted a field examination of the affected lands covered under the bond submitted by Kerr-McGee Corporation. The bond filed by Kerr-McGee is sufficient to cover any possible damages to the ranch property in question. We feel the bond should be approved." No report accompanied this statement.

On June 26, 1981, BLM dismissed Soderberg Ranch's protest insofar as it challenged the validity of Kerr-McGee's discovery, holding that the only proper vehicle to do so was a private contest. BLM reserved ruling on the acceptability of the bond. Soderberg Ranch did not appeal.

On August 11, 1981, BLM issued its decision dismissing Soderberg Ranch's protest against the approval of the bond. Soderberg Ranch appealed. Although BLM named Kerr-McGee as an "adverse party" in this decision, and Soderberg Ranch accordingly served it with its subsequent notice of appeal, Kerr-McGee did not answer.

[1] We cannot affirm BLM's decision to dismiss appellant's protest on the basis of the present record, which contains only a conclusory statement, completely unsupported by any facts of record, that the bond "is sufficient."

The record is utterly devoid of anything supporting the validity of this conclusion. Objective administrative review of the propriety of this determination is not possible in these circumstances. BLM's decision of August 11, 1981, is therefore vacated.

BLM is directed to readjudicate appellant's protest fully, considering each of the grounds raised therein, and to develop a factual record supporting the propriety of its decision to approve or disapprove the bond. To assure a full, objective consideration of this question, BLM should give Kerr-McGee an opportunity to respond to the matters raised by appellant's protest before a new decision is issued.

Appellant's request for a factual hearing is denied, pending readjudication of its protest by BLM.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and remanded to BLM for further action as specified herein.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Gail M. Frazier
Administrative Judge

